

Gupta et al.

S/N: 09/748,520

**REMARKS**

Claims 1-35 are pending in the present application. In the Office Action mailed April 25, 2005, the Examiner reinstated a previously withdrawn rejection of claims 1-7 and 22-25 under 35 U.S.C. §102(e) as being anticipated by Christensen et al. (US 2002/0156694). The Examiner next reinstated a previously withdrawn rejection of claims 8-21 and 26-35 under 35 U.S.C. §103(a) as being unpatentable over Christensen et al. in view of Parad (USP 5,369,570).

In an Office Action mailed January 12, 2005, the Examiner indicated that claims 1-35 were allowed, but made the unusual request for "a copy of the specification drafted before 12 December 2000 since the application was filed ten days later, on 22 December 2000." The Examiner made this request after also requesting a "mapping of features claimed with features shown in Exhibit A submitted 30 January 2004, for example where the step of 'counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available and displaying a listing of each product and when the product is available' as claimed in claim 1." The Examiner, however, made this request notwithstanding a previous indication that the Declaration under 37 C.F.R. §1.131 filed by Applicant on December 31, 2003 was accepted and disqualified Christensen et al. as a reference. Moreover, the Examiner did not cite any authority, either in case law or in the MPEP, to support such a request.

According to the MPEP, "the essential thing to be shown under 37 CFR 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact." MPEP §715.07. In this regard, "evidence in the form of exhibits may accompany the affidavit or declaration." Id. Further, "any accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself." Id., citing Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989). Thus, "the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records, and 'notes.'" Id. Applying this standard, it is clear that the Declaration and its supporting Exhibit satisfy the requirements of 37 CFR §1.131.

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Specifically, the Declaration sets forth the facts of priority. The Declaration affirmatively sets forth facts regarding conception of the claimed invention prior to December 12, 2000, the effective filing date of Christiansen et al. While it is believed that the Exhibit provides support for the facts presented in the Declaration and thus supports all the claimed limitations, nevertheless, any claim limitations that are arguably not directly supported by the Exhibit are supported by the facts provided in the Declaration. For example, the Examiner contends that the step of "counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available and displaying a listing of each product and when the product is available" is not supported by the Exhibit. While Applicant believes that this limitation is supported by the Exhibit, assuming *arguendo* that it is not, the Declaration sets forth that a method that includes such a step was conceived of prior to December 12, 2000. See Declaration under 37 C.F.R. §1.131, para. 3. In particular, facts were provided setting forth that the Applicant conceived and worked diligently with counsel in preparation of patent application for a method for displaying real-time status of product availability that includes automatically querying a database for data about a plurality of products that are scheduled for production, at regular time intervals, for a date when each product will be ready for shipment for a plurality of products, and if the date does not exist, skipping that product; otherwise, if a date exists, for each product, counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available and displaying a listing of each product and when the product is available for shipment for product availability management. Accordingly, Applicant, in the Declaration of December 31, 2003 has established priority of the claimed invention.

Incidentally, however, Applicant refers the Examiner to page 6 of the Exhibit wherein it is stated that one advantage of the invention is that "now the Sales Reps can tell our customers about the exact availability of our product offerings in Real Time" and to page 5 of the Exhibit where an exemplary screen shot is shown illustrating a display of product availability. Exhibit, pgs. 5-6. As such, the Exhibit provides support for "counting a number of days between a current date and the date when the product will be ready for shipment to create a number of days before the product is available and

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displaying a listing of each product and when the product is available", as claimed.  
Exhibit, pgs. 5-6.

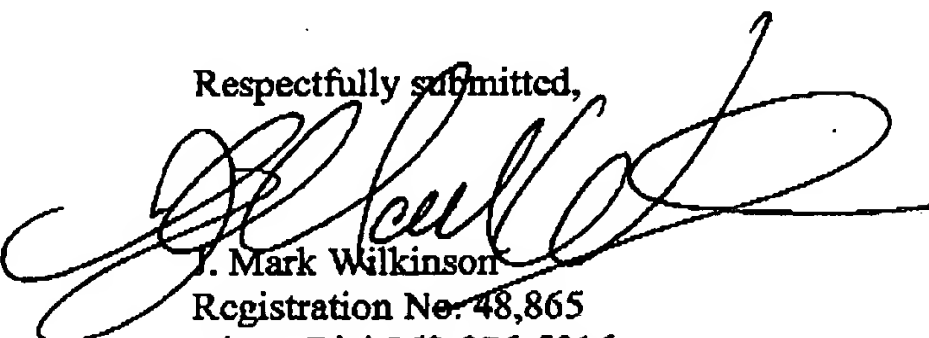
As the Declaration and accompanying Exhibit filed on December 31, 2003 comply with 37 CFR §1.131, Christiansen et al. is disqualified as prior art against the claimed invention and, thus, cannot be relied upon by the Examiner in the rejection of claims 1-35. As such, Applicant requests withdrawal of the rejection of claims 1-35.

Therefore, in light of at least the foregoing, Applicant respectfully believes that claims 1-35 are in condition for allowance, as previously indicated by the Examiner, and requests timely issuance of a Notice of Allowance for claims 1-35.

While Applicant believes that the Declaration and accompanying Exhibit are compliant with 37 CFR §1.131, should the Examiner maintain the objection thereto, Applicant requests that the Examiner clarify whether the objection to the Declaration and Exhibit is one of formal sufficiency and propriety or on the merits.

Applicant appreciates the Examiner's consideration of these Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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